

REMARKS

Claims 1-9 are pending. Claims 7-9 are cancelled without prejudice or disclaimer. Claim 4 is amended for clarity. No new matter has been added.

Regarding Claim Rejections:

Claim Rejection Under 35 USC § 112

On page 2 of the office action, the examiner has rejected claims 4-7 and 9 and alleged as being indefinite for not including an additional ingredient of the claimed composition. In response, applicants amend claim 4 by adding "a pharmaceutically acceptable carrier", which is well known in the art. Therefore, no new matter has been introduced. Without acquiescing to the rejections, in order to expedite the prosecution, applicants cancel claims 7 and 9 without prejudice or disclaimer.

Withdrawal of the indefiniteness rejection is requested.

Claim Rejection under 35 USC § 101

On page 2 of the office action, the examiner has rejected the claims 7 and 9 under 35 USC § 101. Without acquiescing to the rejections, in order to expedite the prosecution, applicants cancel claims 7 and 9 without prejudice or disclaimer.

Claim Rejection under 35 USC § 112

On pages 2-3 of the office action, the examiner has rejected claim 8 and alleged that the specification is not enabling for a "method of preventing an allergic disease." Without acquiescing to the rejections, in order to expedite the prosecution, applicants cancel claim 8 without prejudice or disclaimer.

Claim Rejection Under 35 USC § 102

On pages 4-5 of the office action, the examiner has rejected claims 1-6 and 8, and alleged as being anticipated by US Patent No. 6,372,735 (the '735 patent). The examiner alleges that the compound is disclosed in Example 20 at col. 42, line 15 to

col. 43, line 34 of the '735 patent, thus anticipates the claimed compound. Applicants respectfully disagree with the examiner and submit that the compound disclosed in the '735 patent does not inherently possess the characteristics of the claimed compound. Applicants also submit herewith a declaration under 37 CFR §§ 1.132 and experimental evidences that the claimed compound is substantially different in its physical and chemical characteristics from the compound disclosed in the '735 patent.

Applicants point out that the claimed compound has diffraction peaks at $11.2 \pm 0.1^\circ$, $14.4 \pm 0.1^\circ$, $15.5 \pm 0.1^\circ$, and $25.3 \pm 0.1^\circ$ (see instant claim 1, for example), whereas the compound of the '735 patent has a diffraction peak at around 4.7° (See attached declaration of Shin-ichi KITAHARA and the experimental data attached therewith).

Applicants also indicate that the compound of the '735 patent has a melting point in the range of 200°C to 228°C (with decomposition) (See attached declaration of Shin-ichi KITAHARA and the experimental data attached therewith). In contrast, the claimed compound has a melting point in the range of 240°C to 246°C (with decomposition) (see instant claim 3, for example). Thus, the claimed compound is substantially different in its physical and chemical characteristics from the compound of the '735 patent.

Thus, applicants have proven that the process of the '735 patent does not produce the claimed compound. Therefore, the '735 patent can not anticipate the compounds of claims 1-3 or the compositions according to claims 4-6 and 8.

Withdrawal of the anticipation rejection is earnestly requested.

REQUEST RELIEF

In view of above amendments and remarks, applicants respectfully submit that claims 1-6 are allowable, and respectfully request favorable consideration to that effect.

The Examiner is invited to contact the undersigned at (202) 912-2000 should there be any questions.

Respectfully submitted,

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Date



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